

1 H.170

2 Introduced by Representatives Grad of Moretown, Conquest of Newbury, and

3 Burditt of West Rutland

4 Referred to Committee on

5 Date:

6 Subject: Health; regulated drugs; marijuana

7 Statement of purpose of bill as introduced: This bill proposes to remove all
8 criminal and civil penalties for possession of two ounces or less of marijuana
9 and cultivation of two mature marijuana plants and seven immature marijuana
10 plants for a person who is 21 years of age or older; adjust the civil and
11 criminal penalties for possession and cultivation of marijuana in amounts in
12 excess of the legalized amounts; establish civil penalties for consuming
13 marijuana in public and cultivating marijuana in a manner that is not on
14 property lawfully in possession of the cultivator or without the consent of the
15 person in lawful possession of the property or outside an enclosure that is
16 screened from public view; establish criminal penalties and a civil action for
17 damages for furnishing marijuana to a person under 21 years of age; and
18 establish a crime of chemical extraction of marijuana.

19 An act relating to possession and cultivation of marijuana by a person
20 21 years of age or older

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 ~~Sec. 1. LEGISLATIVE INTENT: CIVIL AND CRIMINAL PENALTIES~~

3 It is the intent of the General Assembly to eliminate all penalties for
4 possession of two ounces or less of marijuana for a person who is 21 years of
5 age or older while retaining the current criminal penalties for possession of
6 larger amounts of marijuana and criminal penalties for unauthorized
7 dispensing or sale of marijuana. This act also retains civil penalties for
8 possession of marijuana by a person under 21 years of age, which are the same
9 as for possession of alcohol by a person under 21 years of age.

10 Sec. 2. 18 V.S.A. § 4201 is amended to read:

11 § 4201. DEFINITIONS

12 As used in this chapter, unless the context otherwise requires:

13 * * *

14 (15)(A) ~~“Marijuana” means any plant material of the genus cannabis or~~
15 ~~any preparation, compound, or mixture thereof except~~

16 ~~(A) sterilized seeds of the plant;~~

17 ~~(B) fiber produced from the stalks; or~~

18 ~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562~~ all parts of
19 the plant Cannabis sativa L., except as provided by subdivision (B) of this
20 subdivision (15), whether growing or harvested, and includes:

21 ~~(i) the seeds of the plant,~~

1 ~~(ii) the resin extracted from any part of the plant; and~~

2 ~~(iii) any compound, manufacture, salt, derivative, mixture, or~~
3 ~~preparation of the plant, its seeds, or resin.~~

4 ~~(B) "Marijuana" does not include:~~

5 ~~(i) the mature stalks of the plant and fiber produced from the~~
6 ~~stalks;~~

7 ~~(ii) oil or cake made from the seeds of the plant;~~

8 ~~(iii) any compound, manufacture, salt, derivative, mixture, or~~
9 ~~preparation of the mature stalks, fiber, oil, or cake; or~~

10 ~~(iv) the sterilized seed of the plant that is incapable of~~
11 ~~germination.~~

12 * * *

13 ~~(43) "Immature marijuana plant" means a female marijuana plant that~~
14 ~~has not flowered and that does not have buds that may be observed by visual~~
15 ~~examination.~~

16 ~~(44) "Mature marijuana plant" means a female marijuana plant that has~~
17 ~~flowered and that has buds that may be observed by visual examination.~~

18 Sec. 3. 18 V.S.A. § 4230 is amended to read:

19 § 4230. MARIJUANA

20 (a) Possession and cultivation.

21 ~~(1)(A) No person shall knowingly and unlawfully possess more than~~

1 ~~one ounce of marijuana or more than five grams of hashish or cultivate~~
2 ~~marijuana.~~

3
4 (B) A person convicted of a second or subsequent offense of
5 knowingly and unlawfully possessing more than ~~one ounce~~ two ounces of
6 marijuana or more than five 10 grams of hashish or cultivating more than two
7 mature marijuana plants and seven immature marijuana plants shall be
8 imprisoned not more than ~~two years~~ six months or fined not more than
9 \$~~2,000.00~~ \$500.00, or both.

10 (C) ~~Upon an adjudication of guilt for a first or second offense under~~
11 ~~this subdivision, the court may defer sentencing as provided in 13 V.S.A.~~
12 ~~§ 7041 except that the court may in its discretion defer sentence without the~~
13 ~~filing of a presentence investigation report and except that sentence may be~~
14 ~~imposed at any time within two years from and after the date of entry of~~
15 ~~deferment. The court may, prior to sentencing, order that the defendant submit~~
16 ~~to a drug assessment screening which may be considered at sentencing in the~~
17 ~~same manner as a presentence report.~~

18 (2) A person knowingly and unlawfully possessing ~~two more than three~~
19 ~~ounces or more~~ of marijuana or ~~10~~ more than 15 grams ~~or more~~ of hashish or
20 knowingly and unlawfully cultivating more than ~~three~~ four mature marijuana
21 ~~plants of marijuana and~~ or 14 immature marijuana plants shall be imprisoned

1 ~~not more than three years or fined not more than \$10,000.00, two years or fined~~
2 ~~not more than \$2,000.00, or both.~~

3 (3) A person knowingly and unlawfully possessing more than one
4 ~~pound or more~~ of marijuana or more than 2.8 ounces or more of hashish or
5 knowingly and unlawfully cultivating more than ~~10~~ eight mature marijuana
6 ~~plants or 28 immature marijuana plants~~ shall be imprisoned not more than
7 ~~five~~ three years or fined not more than ~~\$100,000.00~~ \$10,000.00, or both.

8 (4) A person knowingly and unlawfully possessing more than 10 pounds
9 ~~or more~~ of marijuana or more than one pound or more of hashish or knowingly
10 and unlawfully cultivating more than ~~25~~ 10 mature marijuana plants or 35
11 immature marijuana plants shall be imprisoned not more than ~~15~~ 10 years or
12 fined not more than ~~\$500,000.00~~ \$100,000.00, or both.

13 (5) If a court fails to provide the defendant with notice of collateral
14 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later
15 at any time shows that the plea and conviction for a violation of this subsection
16 may have or has had a negative consequence, the court, upon the defendant's
17 motion, shall vacate the judgment and permit the defendant to withdraw the
18 plea or admission and enter a plea of not guilty. Failure of the court to advise
19 the defendant of a particular collateral consequence shall not support a motion
20 to vacate.

21 ~~(6) The amounts of marijuana in this subsection shall not include~~

1 ~~marijuana cultivated, harvested, and stored in accordance with section 4230f of~~
2 ~~this title.~~

3 * * *

4 Sec. 4. 18 V.S.A. § 4230a is amended to read:

5 § 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE
6 OR OLDER; CIVIL VIOLATION

7 (a)(1) A person 21 years of age or older who knowingly and unlawfully
8 possesses ~~one ounce or but less of marijuana or five grams or less of hashish~~
9 any of the following commits a civil violation and:

10 (A) more than two ounces, but not more than three ounces of
11 marijuana;

12 (B) more than 10 grams, but not more than 15 grams of hashish; or

13 (C) more than two mature marijuana plants and seven immature
14 marijuana plants, but not more than four mature marijuana plants or 14
15 immature marijuana plants.

16 (2) A person who violates subdivision (1) of this subsection shall be
17 assessed a civil penalty as follows:

18 (1) of not more than \$200.00 for a first offense;

19 (2) not more than \$300.00 for a second offense;

20 (3) not more than \$500.00 for a third or subsequent offense.

21 ~~(b)(1) Except as otherwise provided in this section, a person 21 years of age~~

1 ~~or older who possesses one ounce or less of marijuana or five grams or less of~~
2 ~~hashish or who possesses paraphernalia for marijuana use and shall not be~~
3 ~~penalized or sanctioned in any other manner by the State or any of its political~~
4 ~~subdivision or denied any right or privilege under State law.~~

5 ~~(2) A violation of this section shall not result in the creation of a~~
6 ~~criminal history record of any kind.~~

7 ~~(b) Second or subsequent violations of subdivision (1) of subsection (a)~~
8 ~~shall be punished in accordance with subdivision 4230(a)(1)(A) of this title.~~

9 ~~(c)(1) This section does not exempt any person from arrest or prosecution~~
10 ~~for being under the influence of marijuana while operating a vehicle of any~~
11 ~~kind and shall not be construed to repeal or modify existing laws or policies~~
12 ~~concerning the operation of vehicles of any kind while under the influence of~~
13 ~~marijuana.~~

14 ~~(2) This section is not intended to affect the search and seizure laws~~
15 ~~afforded to duly authorized law enforcement officers under the laws of this~~
16 ~~State. Marijuana is contraband pursuant to section 4242 of this title and~~
17 ~~subject to seizure and forfeiture unless possessed in compliance with chapter~~
18 ~~86 of this title (therapeutic use of cannabis).~~

19 ~~(3) This section shall not be construed to prohibit a municipality from~~
20 ~~regulating, prohibiting, or providing additional penalties for the use of~~
21 ~~marijuana in public places.~~

1 ~~(d) If a person suspected of violating this section contests the presence of~~
2 ~~cannabinoids within 10 days of receiving a civil citation, the person may~~
3 ~~request that the State Crime Laboratory test the substance at the person's~~
4 ~~expense. If the substance tests negative for the presence of cannabinoids, the~~
5 ~~State shall reimburse the person at ~~state~~ State expense.~~

6 (e)(1) A law enforcement officer is authorized to detain a person if:

7 (A) the officer has reasonable grounds to believe the person has
8 violated this section; and

9 (B) the person refuses to identify himself or herself satisfactorily to
10 the officer when requested by the officer.

11 (2) The person may be detained only until the person identifies himself
12 or herself satisfactorily to the officer or is properly identified. If the officer is
13 unable to obtain the identification information, the person shall forthwith be
14 brought before a judge in the Criminal Division of the Superior Court for that
15 purpose. A person who refuses to identify himself or herself to the Court on
16 request shall immediately and without service of an order on the person be
17 subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

18 (f) Fifty percent of the civil penalties imposed by the Judicial Bureau for
19 violations of this section shall be deposited in the Drug Task Force Special
20 Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7,
21 ~~subchapter 5, and available to the Department of Public Safety for the funding~~

1 ~~of law enforcement officers on the Drug Task Force, except for a \$12.50~~
2 administrative charge for each violation which shall be deposited in the Court
3 Technology Special Fund, in accordance with 13 V.S.A. § 7252. The
4 remaining 10 percent shall be deposited in the Youth Substance Abuse Safety
5 Program Special Fund, hereby created to be managed pursuant to 32 V.S.A.
6 chapter 7, subchapter 5, and available to the Court Diversion Program for
7 funding of the Youth Substance Abuse Safety Program as required by section
8 4230b of this title.

9 Sec. 5. 18 V.S.A. § 4230b is amended to read:

10 § 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
11 OF AGE; CIVIL VIOLATION

12 (a) Offense. A person under 21 years of age who knowingly and
13 unlawfully possesses ~~one ounce~~ two ounces or less of marijuana or ~~five~~ 10
14 grams or less of hashish or two mature marijuana plants or fewer or seven
15 immature marijuana plants or fewer commits a civil violation and shall be
16 referred to the Court Diversion Program for the purpose of enrollment in the
17 Youth Substance Abuse Safety Program. A person who fails to complete the
18 program successfully shall be subject to:

19 (1) a civil penalty of \$300.00 and suspension of the person's operator's
20 license and privilege to operate a motor vehicle for a period of 30 days, for a
21 ~~first offense, and~~

1 ~~(2) a civil penalty of not more than \$600.00 and suspension of the~~
2 person's operator's license and privilege to operate a motor vehicle for a
3 period of 90 days, for a second or subsequent offense.

4 * * *

5 Sec. 6. 18 V.S.A. § 4230d is amended to read:

6 § 4230d. MARIJUANA POSSESSION BY A PERSON UNDER 16 YEARS
7 OF AGE; DELINQUENCY

8 No person shall knowingly and unlawfully possess marijuana. A person
9 under ~~the age of 16 years~~ of age who knowingly and unlawfully possesses ~~one~~
10 ~~ounce~~ two ounces or less of marijuana or ~~five~~ 10 grams or less of hashish or
11 two mature marijuana plants or fewer of seven immature marijuana plants or
12 fewer commits a delinquent act and shall be subject to 33 V.S.A. chapter 52.

13 The person shall be provided the opportunity to participate in the Court
14 Diversion Program unless the prosecutor states on the record why a referral to
15 the Court Diversion Program would not serve the ends of justice.

16 Sec. 7. 18 V.S.A. § 4230e is added to read:

17 § 4230e. POSSESSION OF MARIJUANA BY A PERSON 21 YEARS OF
18 AGE OR OLDER

19 (a)(1) Except as otherwise provided in this title, a person 21 years of age or
20 older who possesses two ounces or less of marijuana or 10 grams or less of
21 hashish or two mature marijuana plants or fewer of seven immature marijuana

1 ~~plants or fewer shall not be penalized or sanctioned in any manner by the State~~
2 ~~or any of its political subdivisions or denied any right or privilege under~~
3 ~~State law.~~

4 ~~(2) The two-ounce limit of marijuana that may be possessed by a person~~
5 ~~21 years of age or older shall not include marijuana cultivated, harvested, and~~
6 ~~stored in accordance with section 4230f of this title.~~

7 ~~(b) A person shall not consume marijuana or hashish in a public place.~~
8 ~~“Public place” means any street, alley, park, sidewalk, public building other~~
9 ~~than individual dwellings, any place of public accommodation as defined in~~
10 ~~9 V.S.A. § 4501, and any place where the possession of a lighted tobacco~~
11 ~~product is prohibited pursuant to section 1421 of this title or chapter 37 of this~~
12 ~~title. A person who violates this subsection shall be assessed a civil penalty as~~
13 ~~follows:~~

14 ~~(1) not more than \$100.00 for a first offense,~~

15 ~~(2) not more than \$200.00 for a second offense; and~~

16 ~~(3) not more than \$500.00 for a third or subsequent offense.~~

17 Sec. 8. 18 V.S.A. § 4230f is added to read:

18 § 4230f. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF

19 AGE OR OLDER

20 (a)(1) Except as otherwise provided in this section, a person 21 years of
21 age or older who cultivates no more than two mature marijuana plants or seven

1 ~~immature marijuana plants shall not be penalized or sanctioned in any manner~~
2 ~~by the State or any of its political subdivisions or denied any right or privilege~~
3 ~~under State law.~~

4 ~~(2) Each dwelling unit shall be limited to two mature marijuana plants~~
5 ~~or seven immature marijuana plants regardless of how many persons 21 years~~
6 ~~of age or older reside in the dwelling unit. As used in this section, "dwelling~~
7 ~~unit" means a building or the part of a building that is used as a primary home,~~
8 ~~residence, or sleeping place by one or more persons who maintain a household.~~

9 ~~(3) Any marijuana harvested from the plants allowed pursuant to this~~
10 ~~subsection shall not count toward the one ounce possession limit in section~~
11 ~~4229a of this title provided it is stored in a secure indoor facility on the~~
12 ~~property where the marijuana was cultivated.~~

13 ~~(4) Cultivation in excess of the limits provided in this subsection shall~~
14 ~~be punished in accordance with section 4230 of this title.~~

15 ~~(b)(1) Personal cultivation of marijuana only shall occur:~~

16 ~~(A) on property lawfully in possession of the cultivator or with the~~
17 ~~consent of the person in lawful possession of the property; and~~

18 ~~(B) in an enclosure that is screened from public view.~~

19 ~~(2) A person who violates this subsection shall be assessed a civil~~
20 ~~penalty as follows:~~

21 ~~(A) not more than \$100.00 for a first offense,~~

1 ~~(B) not more than \$200.00 for a second offense; and~~

2 ~~(C) not more than \$500.00 for a third or subsequent offense.~~

3 Sec. 9.18 V.S.A. § 4230g is added to read:

4 § 4230g. FURNISHING MARIJUANA TO A PERSON UNDER

5 21 YEARS OF AGE; CRIMINAL OFFENSE

6 (a) No person shall:

7 (1) furnish marijuana to a person under 21 years of age; or

8 (2) knowingly enable the consumption of marijuana by a person under

9 21 years of age.

10 (b) As used in this section, “enable the consumption of marijuana” means

11 creating a direct and immediate opportunity for a person to consume

12 marijuana.

13 (c) Except as provided in subsection (d) of this section, a person who

14 violates subsection (a) of this section shall be imprisoned not more than two

15 years or fined not more than \$2,000.00, or both.

16 (d) A person who violates subsection (a) of this section, where the person

17 under 21 years of age, while operating a motor vehicle on a public highway,

18 causes death or serious bodily injury to himself or herself or to another person

19 as a result of the violation, shall be imprisoned not more than five years or

20 fined not more than \$10,000.00, or both.

21 ~~(e) This section shall not apply to.~~

1 ~~(1) A person under 21 years of age who furnishes marijuana to a person~~
2 ~~under 21 years of age or who knowingly enables the consumption of marijuana~~
3 ~~by a person under 21 years of age. Possession of an ounce or less of marijuana~~
4 ~~by a person under 21 years of age shall be punished in accordance with~~
5 ~~sections 4230b-4230d of this title and dispensing or selling marijuana shall be~~
6 ~~punished in accordance with sections 4230 and 4237 of this title.~~

7 (2) A dispensary that lawfully provides marijuana to a registered patient
8 or caregiver pursuant to chapter 86 of this title.

9 Sec. 10. 18 V.S.A. § 4230h is added to read:

10 § 4230h. FURNISHING MARIJUANA TO A PERSON UNDER
11 21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

12 (a) A spouse, child, guardian, employer, or other person who is injured in
13 person, property, or means of support by a person under 21 years of age who is
14 impaired by marijuana, or in consequence of the impairment by marijuana of
15 any person under 21 years of age, shall have a right of action in his or her own
16 name, jointly or severally, against any person or persons who have caused in
17 whole or in part such impairment by furnishing marijuana to a person under 21
18 years of age.

19 (b) Upon the death of either party, the action and right of action shall
20 survive to or against the party's executor or administrator. The party injured
21 or his or her legal representatives may bring either a joint action against the

1 ~~impaired person under 21 years of age and the person or persons who~~
2 ~~furnished the marijuana, or a separate action against either or any of them.~~

3 ~~(c) An action to recover for damages under this section shall be~~
4 ~~commenced within two years after the cause of action accrues, and not after.~~

5 ~~(d) In an action brought under this section, evidence of responsible actions~~
6 ~~taken or not taken is admissible if otherwise relevant.~~

7 ~~(e) A defendant in an action brought under this section has a right of~~
8 ~~contribution from any other responsible person or persons, which may be~~
9 ~~enforced in a separate action brought for that purpose.~~

10 ~~(f) A person who knowingly furnishes marijuana to a person under 21~~
11 ~~years of age may be held liable under this section if the social host knew, or a~~
12 ~~reasonable person in the same circumstances would have known, that the~~
13 ~~person who received the marijuana was under 21 years of age.~~

14 Sec. 11. 18 V.S.A. § 4230i is added to read:

15 § 4230i. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

16 PROHIBITED

17 (a) No person shall manufacture concentrated marijuana by chemical
18 extraction or chemical synthesis using butane or hexane unless authorized as a
19 dispensary pursuant to a registration issued by the Department of Public Safety
20 pursuant to chapter 86 of this title.

21 ~~(b) A person who violates subsection (a) of this section shall be imprisoned~~

1 ~~not more than two years or fined not more than \$2,000.00, or both. A person~~
2 who violates subsection (a) of this section and causes serious bodily injury to
3 another person shall be imprisoned not more than five years or fined not more
4 than \$5,000.00, or both.

5 Sec. 12. 18 V.S.A. § 4476 is amended to read:

6 § 4476. OFFENSES AND PENALTIES

7 (a) ~~No person shall sell, possess with intent to sell, or manufacture with~~
8 ~~intent to sell, drug paraphernalia, knowing, or under circumstances where one~~
9 ~~reasonably should know, that it will be used to plant, propagate, cultivate,~~
10 ~~grow, harvest, manufacture, compound, convert, produce, process, prepare,~~
11 ~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or~~
12 ~~otherwise introduce into the human body a regulated drug in violation of~~
13 ~~chapter 84 of this title. Whoever violates any provision of this section shall be~~
14 ~~punished by imprisonment for not more than one year, or by a fine of not more~~
15 ~~than \$1,000.00, or both.~~

16 (b) ~~Any A~~ person who violates subsection (a) of this section by ~~selling~~ sells
17 drug paraphernalia to a person under 18 years of age shall be imprisoned for
18 not more than two years, or fined not more than \$2,000.00, or both.

19 (c)~~(b)~~ The distribution and possession of needles and syringes as part of an
20 organized community-based needle exchange program shall not be a violation
21 ~~of this section or of chapter 84 of this title.~~

1 ~~Sec. 13. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2017.~~

Sec. 1. LEGISLATIVE INTENT; CIVIL AND CRIMINAL PENALTIES

It is the intent of the General Assembly to eliminate all penalties for possession of one ounce or less of marijuana for a person who is 21 years of age or older while retaining civil and criminal penalties for possession of larger amounts of marijuana and criminal penalties for unauthorized dispensing or sale of marijuana. This act also retains civil penalties for possession of marijuana by a person under 21 years of age, which are the same as for possession of alcohol by a person under 21 years of age.

Sec. 2. 18 V.S.A. § 4201 is amended to read:

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

** * **

~~(15)(A) "Marijuana" means any plant material of the genus cannabis or any preparation, compound, or mixture thereof except:~~

~~(A) sterilized seeds of the plant;~~

~~(B) fiber produced from the stalks; or~~

~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562 all parts of the plant Cannabis sativa L., except as provided by subdivision (B) of this subdivision (15), whether growing or harvested, and includes:~~

(i) the seeds of the plant;

(ii) the resin extracted from any part of the plant; and

(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

(B) “Marijuana” does not include:

(i) the mature stalks of the plant and fiber produced from the stalks;

(ii) oil or cake made from the seeds of the plant;

(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;

(iv) the sterilized seed of the plant that is incapable of germination; or

(v) hemp or hemp products, as defined in 6 V.S.A. § 562.

* * *

(43) “Immature marijuana plant” means a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.

(44) “Mature marijuana plant” means a female marijuana plant that has flowered and that has buds that may be observed by visual examination.

Sec. 3. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) No person shall knowingly and unlawfully possess more than ~~one ounce~~ two ounces of marijuana or more than ~~five~~ 10 grams of hashish or cultivate more than three mature marijuana plants or six immature marijuana plants. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than ~~one ounce~~ two ounces of marijuana or more than ~~five~~ 10 grams of hashish or cultivating more than three mature marijuana plants or six immature marijuana plants shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit

to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

~~(2) A person knowingly and unlawfully possessing two ounces of marijuana or 10 grams of hashish or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.~~

~~(3) A person knowingly and unlawfully possessing more than one pound or more of marijuana or more than 2.8 ounces or more of hashish or knowingly and unlawfully cultivating more than 10 plants of six mature marijuana plants or 12 immature marijuana plants shall be imprisoned not more than five three years or fined not more than \$100,000.00 \$10,000.00, or both.~~

~~(4)(3) A person knowingly and unlawfully possessing more than 10 pounds or more of marijuana or more than one pound or more of hashish or knowingly and unlawfully cultivating more than 25 plants of 12 mature marijuana plants or 24 immature marijuana plants shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.~~

~~(5)(4) If a court fails to provide the defendant with notice of collateral consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's~~

motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(5) The amounts of marijuana in this subsection shall not include marijuana cultivated, harvested, and stored in accordance with section 4230f of this title.

* * *

Sec. 4. 18 V.S.A. § 4230a is amended to read:

*§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE
OR OLDER; CIVIL VIOLATION*

(a)(1) ~~Except as otherwise provided in this title, a person 21 years of age or older who knowingly and unlawfully possesses one ounce or but less of marijuana or five grams or less of hashish~~ any of the following commits a civil violation and:

(A) more than one ounce, but not more than two ounces of marijuana;

(B) more than five grams, but not more than 10 grams of hashish; or

(C) more than two mature marijuana plants and four immature marijuana plants, but not more than three mature marijuana plants or six immature marijuana plants.

(2) A person who violates subdivision (1) of this subsection shall be assessed a civil penalty as follows:

(1) of not more than \$200.00 for a first offense;

(2) not more than \$300.00 for a second offense;

(3) not more than \$500.00 for a third or subsequent offense.

(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use and shall not be penalized or sanctioned in any other manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

(b) Second or subsequent violations of subdivision (1) of subsection (a) shall be punished in accordance with subdivision 4230(a)(1) of this title.

~~(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.~~

~~(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this~~

~~State. Marijuana is contraband pursuant to section 4242 of this title and possessed in violation of this title is contraband and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).~~

~~(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.~~

~~(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.~~

~~(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and possessed in violation of this title is contraband and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).~~

~~(3)(2) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places. Nothing in this section or sections 4230b, 4230e,~~

and 4230f of this title:

(A) exempts a person from arrest, citation, or prosecution for being under the influence of marijuana while operating a vehicle of any kind or for consuming marijuana while operating a motor vehicle;

(B) repeals or modifies existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana or for consuming marijuana while operating a motor vehicle;

(C) limits the authority of primary and secondary schools to impose administrative penalties for the possession of marijuana on school property;

(D) prohibits a municipality from adopting a civil ordinance to provide additional penalties for consumption of marijuana in a public place;

(E) prohibits a landlord from banning possession or use of marijuana in a lease agreement; or

(F) allows an inmate of a correctional facility to possess or use marijuana or to limit the authority of law enforcement, the courts, the Department of Corrections, or the Parole Board to impose penalties on offenders who use marijuana in violation of a court order, conditions of furlough, parole, or rules of a correctional facility.

(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's

expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at ~~state~~ State expense.

(e)(1) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

(f) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Department of Public Safety for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation which shall be deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The

remaining 50 percent shall be deposited in the Youth Substance Abuse Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

Sec. 5. 18 V.S.A. § 4230b is amended to read:

*§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
OF AGE; CIVIL VIOLATION*

(a) Offense. A person under 21 years of age who knowingly and unlawfully possesses ~~one ounce~~ two ounces or less of marijuana or ~~five~~ 10 grams or less of hashish or three mature marijuana plants or fewer or six immature marijuana plants or fewer commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and

(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.

* * *

Sec. 6. REPEAL

18 V.S.A. § 4230d (Marijuana possession by a person under 16 years of age; delinquency) is repealed.

Sec. 7. 18 V.S.A. § 4230e is added to read:

§ 4230e. POSSESSION OF MARIJUANA BY A PERSON 21 YEARS OF AGE OR OLDER

(a)(1) Except as otherwise provided in this title, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish and two mature marijuana plants or fewer or four immature marijuana plants or fewer shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) The one-ounce limit of marijuana that may be possessed by a person 21 years of age or older shall not include marijuana cultivated, harvested, and stored in accordance with section 4230f of this title.

(b) A person shall not consume marijuana or hashish in a public place. "Public place" means any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco product is prohibited pursuant to section 1421 of this title or chapter 37 of this

title or 16 V.S.A. § 140. A person who violates this subsection shall be assessed a civil penalty as follows:

- (1) not more than \$100.00 for a first offense;
- (2) not more than \$200.00 for a second offense; and
- (3) not more than \$500.00 for a third or subsequent offense.

Sec. 8. 18 V.S.A. § 4230f is added to read:

§ 4230f. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF AGE OR OLDER

(a)(1) Except as otherwise provided in this section, a person 21 years of age or older who cultivates no more than two mature marijuana plants and four immature marijuana plants shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) Each dwelling unit shall be limited to two mature marijuana plants and four immature marijuana plants regardless of how many persons 21 years of age or older reside in the dwelling unit. As used in this section, "dwelling unit" means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(3) Any marijuana harvested from the plants allowed pursuant to this subsection shall not count toward the one-ounce possession limit in section

4229a of this title provided it is stored in an indoor facility on the property where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

(4) Cultivation in excess of the limits provided in this subsection shall be punished in accordance with sections 4230 and 4230a of this title.

(b)(1) Personal cultivation of marijuana only shall occur:

(A) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(B) in an enclosure that is screened from public view and ~~reasonable precautions are taken to prevent unauthorized access to the marijuana~~ is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

(2) A person who violates this subsection shall be assessed a civil penalty as follows:

(A) not more than \$100.00 for a first offense;

(B) not more than \$200.00 for a second offense; and

(C) not more than \$500.00 for a third or subsequent offense.

Sec. 9. 18 V.S.A. § 4230g is added to read:

§ 4230g. FURNISHING MARIJUANA TO A PERSON UNDER 21 YEARS OF AGE; CRIMINAL OFFENSE

(a) No person shall:

(1) furnish marijuana to a person under 21 years of age; or

(2) knowingly enable the consumption of marijuana by a person under 21 years of age.

(b) As used in this section, "enable the consumption of marijuana" means creating a direct and immediate opportunity for a person to consume marijuana.

(c) Except as provided in subsection (d) of this section, a person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(d) A person who violates subsection (a) of this section, where the person under 21 years of age, while operating a motor vehicle on a public highway, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(e) This section shall not apply to:

(1) A person under 21 years of age who furnishes marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age. Possession of an ounce or less of marijuana by a person under 21 years of age shall be punished in accordance with sections 4230b–4230d of this title and dispensing or selling marijuana shall be punished in accordance with sections 4230 and 4237 of this title.

(2) A dispensary that lawfully provides marijuana to a registered patient or caregiver pursuant to chapter 86 of this title.

Sec. 10. 18 V.S.A. § 4230h is added to read:

§ 4230h. FURNISHING MARIJUANA TO A PERSON UNDER
21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

(a) A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by a person under 21 years of age who is impaired by marijuana, or in consequence of the impairment by marijuana of any person under 21 years of age, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such impairment by furnishing marijuana to a person under 21 years of age.

(b) Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the impaired person under 21 years of age and the person or persons who furnished the marijuana, or a separate action against either or any of them.

(c) An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(d) In an action brought under this section, evidence of responsible actions taken or not taken is admissible if otherwise relevant.

(e) A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(f) A person who knowingly furnishes marijuana to a person under 21 years of age may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the marijuana was under 21 years of age.

Sec. 11. 18 V.S.A. § 4230i is added to read:

§ 4230i. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE
PROHIBITED

(a) No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

Sec. 11a. 18 V.S.A. § 4230j is added to read:

§ 4230j. EXCEPTIONS

(a) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2017 and who possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

(1) not more than \$200.00 for a first offense;

(2) not more than \$300.00 for a second offense;

(3) not more than \$500.00 for a third or subsequent offense.

(b) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2017 and who possesses any of the following commits a misdemeanor and is subject to imprisonment of not more than one year or a fine of not more than \$1,000.00, or both:

(1) more than one ounce, but not more than two ounces of marijuana;

(2) more than five grams, but not more than 10 grams of hashish; or

(3) not more than six mature marijuana plants and 12 immature marijuana plants.

Sec. 11b. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR

POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator's consumption of secondhand marijuana smoke in the vehicle as a result of another person's consumption of marijuana. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages or marijuana in the passenger area of the motor vehicle.

(c) As used in this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than \$500.00. A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00.

A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.

Sec. 11c. 23 V.S.A. § 1134a is amended to read:

*§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR
POSSESSION OF ALCOHOL OR MARIJUANA*

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages or marijuana or possess any open container which contains alcoholic beverages or marijuana in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) As used in this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages in the passenger area of a motor vehicle

designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be fined subject to a civil penalty of not more than \$25.00 \$50.00.

Sec. 12. 18 V.S.A. § 4476 is amended to read:

§ 4476. OFFENSES AND PENALTIES

(a) ~~No person shall sell, possess with intent to sell, or manufacture with intent to sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a regulated drug in violation of chapter 84 of this title. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than \$1,000.00, or both.~~

(b) ~~Any A~~ person who violates subsection (a) of this section by sells drug paraphernalia to a person under 18 years of age shall be imprisoned for not more than two years, or fined not more than \$2,000.00, or both.

(e)(b) The distribution and possession of needles and syringes as part of an organized community-based needle exchange program shall not be a violation of this section or of chapter 84 of this title.

Sec. 12a. 23 V.S.A. § 1134b is amended to read:

*§ 1134b. ~~SMOKING~~ USING MARIJUANA OR TOBACCO IN A MOTOR
VEHICLE WITH CHILD PRESENT*

(a) A person shall not use marijuana as defined in 18 V.S.A. § 4201 or a tobacco substitute as defined in 7 V.S.A. § 1001 or possess a lighted tobacco product or use a tobacco substitute as defined in 7 V.S.A. § 1001 in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision 1258(a)(1) or (2) of this title.

(b) A person who violates subsection (a) of this section shall be subject to a ~~fine~~ civil penalty of not more than \$100.00. No points shall be assessed for a violation of this section.

Sec. 12b. 33 V.S.A. § 3504 is amended to read:

*§ 3504. MARIJUANA AND TOBACCO USE PROHIBITED AT CHILD
CARE FACILITIES*

(a) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201 or to cultivate marijuana, or use tobacco products or tobacco substitutes as defined in 7 V.S.A. § on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.

(b) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201, tobacco products, or tobacco substitutes as defined in 7 V.S.A. § 1001

on the premises, both ~~indoor~~ indoors and in any outdoor area designated for child care, of a licensed or registered family child care home while children are present and in care. If use of marijuana or smoking of tobacco products or tobacco substitutes occurs on the premises during other times, the family child care home shall notify prospective families prior to enrolling a child in the family child care home that their child will be exposed to an environment in which marijuana, tobacco products, or tobacco substitutes, ~~or both,~~ are used. Cultivation of marijuana in a licensed or registered family child care home is not permitted.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2017.